

A AUM Capital Sdn Bhd v Menara UOA Bangsar Management Corp

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL
NO W-02(IM)(NCvC)-1651-09 OF 2022
RAVINTHRAN, AHMAD ZAIDI IBRAHIM AND COLLIN
LAWRENCE SEQUERAH JJCA
10 JANUARY 2024

C *Land Law — Strata title — Management corporation — Common property — Appellant claimed respondent unlawfully utilised money in maintenance account to pay for maintenance of centralised air-conditioning facilities ('CACF') — Appeal against High Court's decision in allowing respondent's application for preliminary determination of questions of law — Whether components of CACF formed part of common property — Whether respondent required to bear costs and expenses of operating and maintaining CACF — Whether respondent ought to seek full reimbursement from the private parcel owners — Whether respondent was negligent in failing to seek full reimbursement from private parcel owners*

D *— Whether respondent shall take all necessary steps to determine sum for full reimbursement of costs and expenses of maintaining CACF — Strata Management Act 2013 ss 59(1), 59(3)(b) & 60*

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F The respondent was a body corporate pursuant to s 171 of the Strata Titles Act 1985 while the appellant was the registered proprietor of one of the 440 parcels in Menara UOA Bangsar. Menara UOA Bangsar was a mixed-development property which contained 440 stratified parcels. The development had two office towers ("Tower A" and "Tower B"), one retail block and one carpark. The respondent paid for the electricity and maintenance of the centralised air-conditioning facilities ('CACF'), which supplied chilled air to the:

G (a) common property of Towers A and B; (b) the common property in the carparks; and (c) the private parcels of Tower B and in the retail area. The appellant's position was that the respondent should not be maintaining the CACF at its own expense because, although the CACF was located on

H common property and capable of being enjoyed by all parcel proprietors, these facilities were enjoyed to a greater extent by a few parcel proprietors than by the rest of the Menara UOA Bangsar parcel proprietors. The appellant claimed that the respondent had unlawfully utilised the money in the maintenance account to pay for the maintenance of the CACF and sought to compel the respondent

I to seek full reimbursement of all monies/sums paid by the respondent towards the maintenance of the CACF. The appellant filed a suit before the High Court against the respondent and the respondent applied for preliminary determination of questions of law under O 14A and/or O 33 r 2 of the Rules of Court 2012. The questions of law were: (i) whether components of the

CACF which were not comprised in any individual parcel of Menara UOA Bangsar, formed part of the ‘common property’ of Menara UOA Bangsar as defined under s 2 of the Strata Management Act 2013 (‘the SMA’) even if the utility or benefit of the CACF accrued in part to one or more proprietors and/or occupiers of private parcels (‘question 1’); (ii) whether the statutory duty imposed by s 59(1)(a) of the SMA on the respondent, as the management corporation of Menara UOA Bangsar, to properly maintain and manage the common property and keep the same in a state of good and serviceable repair, required the respondent to bear the costs and expenses of operating and maintaining the CACF, including the electricity and maintenance costs thereof (‘question 2’); (iii) whether the respondent was empowered and obliged to seek full reimbursement from the private parcel owners of Tower B (‘question 3’); (iv) whether the respondent was negligent in failing to seek full reimbursement from the private parcel owners of Tower B (‘question 4’); and (v) whether the respondent shall take all necessary steps to determine the sum for a full reimbursement of the costs and expenses of maintaining the CACF (‘question 5’). The High Court decided the case in favour of the respondent, answering questions 1 and 2 in the affirmative and questions 3 to 5 in the negative. Hence, this appeal.

Held, dismissing the appeal:

- (1) It could be clearly seen from the plans of the building and photographs of the CACF, that it was located outside of any private parcels. The CACF thus had to be logically defined as ‘common property’ within the scheme of the relevant legislation. Questions 1 and 2 was answered in the affirmative. The respondent was thus statutorily duty bound by s 59(1)(a) of the SMA to properly maintain and manage the common property and keep the same in a state of good and serviceable repair. It would also require them to bear the costs and expenses of operating the CACF which included the electricity and maintenance costs involved. It followed that the respondent was therefore entitled to use monies from the maintenance account to maintain the CACF as common property under the SMA (see paras 32–36).
- (2) There was no legal obligation on the part of the respondent to pursue or claim for any reimbursement for the maintenance costs paid utilising the maintenance account funds. As the CACF did not benefit some of the parcels only, the respondent could not rely on s 59(3)(b) of the SMA to seek reimbursement from the proprietors of individual parcels at Tower B for the CACF electricity charges paid by the respondent. The respondent was statutorily obliged to maintain facilities that substantially benefits some but not all parcels, so long as the facilities benefit the common property as well. The practice of charging different rates of service charges to take into account the specific amount of usage of different elements of common property did not accord with the legislative intent of the SMA

- A which required the management corporation to impose a single rate of service charges on all parcels according to their share units, unless those parcels were used for ‘substantially different purposes’ according to s 60 of the SMA. Questions 3, 4 and 5 was accordingly answered in the negative. The learned High Court judge had committed no error that
- B warranted appellate intervention (see paras 37, 40, 43, 45 & 53–54).

[Bahasa Malaysia summary]

- Responden adalah sebuah pertubuhan perbadanan menurut s 171 Akta Hakmilik Strata 1985 manakala perayu adalah pemilik berdaftar salah satu daripada 440 petak di Menara UOA Bangsar. Menara UOA Bangsar ialah sebuah hartanah pembangunan bercampur yang mengandungi 440 petak berstrata. Pembangunan itu mempunyai dua menara pejabat (‘Menara A’ dan ‘Menara B’), satu blok runcit dan satu tempat letak kereta. Responden membayar tenaga elektrik dan penyelenggaraan kemudahan penyaman udara berpusat (‘CACF’), yang membekalkan udara sejuk kepada: (a) harta bersama Menara A dan B; (b) harta bersama di tempat letak kereta; dan (c) petak persendirian Menara B dan di kawasan peruncitan. Pendirian perayu ialah responden tidak sepatutnya menyelenggara CACF atas perbelanjaannya sendiri kerana, walaupun CACF terletak di atas harta bersama dan mampu dinikmati oleh semua pemilik petak, kemudahan ini dinikmati sebahagian besarnya oleh beberapa pemilik petak daripada pemilik petak Menara UOA Bangsar yang lain. Perayu mendakwa bahawa responden telah menggunakan wang dalam akaun penyelenggaraan secara tidak sah untuk membayar penyelenggaraan CACF dan memohon untuk memaksa responden untuk mendapatkan bayaran balik penuh bagi semua wang/jumlah yang dibayar oleh responden terhadap penyelenggaraan CACF. Perayu memfailkan saman di Mahkamah Tinggi terhadap responden dan responden memohon penentuan awal persoalan undang-undang di bawah A 14A dan/atau A 33 k 2 Kaedah-Kaedah Mahkamah 2012. Persoalan undang-undang adalah: (i) sama ada komponen CACF yang tidak terkandung dalam mana-mana petak individu Menara UOA Bangsar, menjadi sebahagian daripada ‘harta bersama’ Menara UOA Bangsar seperti yang ditakrifkan di bawah s 2 Akta Pengurusan Strata 2013 (‘APS’) walaupun utiliti atau faedah CACF terakru sebahagiannya kepada satu atau lebih pemilik dan/atau penghuni petak persendirian (‘soalan 1’); (ii) sama ada kewajipan statutori yang dikenakan oleh s 59(1)(a) APS ke atas responden, sebagai perbadanan pengurusan Menara UOA Bangsar, untuk menyelenggara dan mengurus harta bersama dengan betul dan menjaganya dalam keadaan baik dan boleh diperbaiki, memerlukan responden menanggung kos dan perbelanjaan mengendalikan dan menyelenggara CACF, termasuk kos elektrik dan penyelenggaraannya (‘soalan 2’); (iii) sama ada responden diberi kuasa dan berkewajipan untuk mendapatkan bayaran balik penuh daripada pemilik petak persendirian Menara B (‘soalan 3’); (iv) sama ada responden cuai kerana gagal mendapatkan bayaran balik penuh daripada pemilik petak persendirian Menara B (‘soalan 4’); dan (v) sama ada responden

hendaklah mengambil semua langkah yang perlu untuk menentukan jumlah pembayaran balik penuh kos dan perbelanjaan penyelenggaraan CACF ('soalan 5'). Mahkamah Tinggi memutuskan kes itu memihak kepada responden, menjawab soalan 1 dan 2 secara afirmatif dan soalan 3 hingga 5 secara negatif. Oleh itu, rayuan ini.

Diputuskan, menolak rayuan:

- (1) Ia boleh dilihat dengan jelas daripada pelan bangunan dan gambar CACF, bahawa ia terletak di luar mana-mana petak persendirian. Oleh itu, CACF perlu ditakrifkan secara logik sebagai 'harta bersama' dalam skim perundangan yang berkaitan. Soalan 1 dan 2 dijawab secara afirmatif. Oleh itu, responden mempunyai kewajiban berkanun oleh s 59(1)(a) APS untuk menyelenggara dan mengurus harta bersama dengan betul dan menjaganya dalam keadaan baik dan boleh diperbaiki. Ia juga memerlukan mereka menanggung kos dan perbelanjaan mengendalikan CACF yang termasuk kos elektrik dan penyelenggaraan yang terlibat. Oleh itu, responden berhak menggunakan wang daripada akaun penyelenggaraan untuk menyelenggara CACF sebagai harta bersama di bawah APS (lihat perenggan 32–36).
- (2) Tiada kewajiban undang-undang di pihak responden untuk meneruskan atau menuntut apa-apa pembayaran balik bagi kos penyelenggaraan yang dibayar menggunakan dana akaun penyelenggaraan. Memandangkan CACF tidak memanfaatkan sebahagian daripada petak sahaja, responden tidak boleh bergantung pada s 59(3)(b) APS untuk mendapatkan bayaran balik daripada pemilik petak individu di Menara B untuk caj elektrik CACF yang dibayar oleh responden. Responden diwajibkan mengikut undang-undang untuk menyelenggara kemudahan yang banyak memberi manfaat kepada sesetengah tetapi bukan semua petak, selagi kemudahan itu juga memberi manfaat kepada harta bersama. Amalan mengenakan kadar caj perkhidmatan yang berbeza untuk mengambil kira amaun khusus penggunaan elemen berbeza harta bersama tidak selaras dengan niat perundangan APS yang memerlukan perbadanan pengurusan untuk mengenakan satu kadar caj perkhidmatan ke atas semua petak mengikut bahagian unit mereka, melainkan petak tersebut digunakan untuk 'tujuan yang jauh berbeza' mengikut s 60 APS. Soalan 3, 4 dan 5 dijawab secara negatif. Hakim Mahkamah Tinggi yang bijaksana tidak melakukan sebarang kekhilafan yang memerlukan campur tangan rayuan (lihat perenggan 37, 40, 43, 45 & 53–54).]

Cases referred to

Dalip Bhagwan Singh v PP [1998] 1 MLJ 1, FC (refd)
Perbadanan Pengurusan 3 Two Square v 3 Two Square Sdn Bhd & Anor and another appeal [2019] MLJU 1983; [2019] 1 LNS 2281, CA (folld)

A *Young v Bristol Aeroplane Co Ltd* [1944] KB 718, CA (refd)

Legislation referred to

Building and Common Property (Maintenance and Management Act) 2007 (repealed by Strata Management Act 2013) s 2

B Rules of Court 2012 O 14A, O 33 r 2
Strata Management Act 2013 ss 2, 50, 59(1)(a), (3)(b), 60
Strata Titles Act 1985 ss 4, 43, 43(1)(a), 44, 171

C **Appeal from:** *AUM Capital Sdn Bhd v Menara UOA Bangsar Management Corp* [2023] 7 MLJ 899 (High Court, Kuala Lumpur)

Lai Chee Hoe (with Ooi Xin Yi and Goh Peng Hong) (Lai, Goh & Assoc) for the appellant.

D *Ganesan Nethi (with Daniel Tan Wee Xian) (Tommy Thomas) for the respondent.*

Collin Lawrence Sequerah JCA:

INTRODUCTION

E [1] This appeal is against the decision of the High Court on 5 August 2022 in allowing the Management Corp's ('respondent') application for preliminary determination of questions of law under O 14A and/or O 33 r 2 of the Rules of Court 2012 ('O 14A application').

F [2] The subject matter of the High Court Suit filed by AUM Capital ('appellant') (a parcel proprietor in Menara UOA Bangsar) against the management corporation (of Menara UOA Bangsar) is whether the management corporation should maintain the centralised air-conditioning facilities ('CACF') at its own expense, including bearing the electricity and maintenance costs thereof.

G [3] There were 5 questions of law were put forward before the High Court. Questions 1 and 2 were proposed by the management corporation while H questions 3 to 5 were proposed by AUM Capital as follows:

(a) question 1 (management corporation):

I Whether components of the centralised air-conditioning facilities which are not comprised in any individual parcel of Menara UOA Bangsar, form part of the 'common property' of Menara UOA Bangsar as defined under s 2 of the Strata Management Act 2013 ('the 2013 Act') even if the utility or benefit of the centralised air-conditioning facilities accrues in part to one or more proprietors and/or occupiers of private parcels?

- (b) question 2 (management corporation):
If the answer to question (1) is in the affirmative, whether the statutory duty imposed by s 59(1)(a) of the 2013 Act on the defendant (management corporation), as the management corporation of Menara UOA Bangsar, to properly maintain and manage the common property and keep the same in a state of good and serviceable repair, requires the defendant (management corporation) to bear the costs and expenses of operating and maintaining the centralised air-conditioning facilities, including the electricity and maintenance costs thereof; A
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- (c) question 3 (AUM Capital):
Whether the defendant (management corporation) is empowered under the relevant laws (including the 2013 Act) and obliged to seek full reimbursement from the private parcel owners of Tower B, having incurred the costs and expenses of maintaining the centralised air conditioning facilities, including the electricity and maintenance costs thereof solely for the benefit of a particular private parcel owner, namely UOA REIT, in respect of the centralised air conditioning facilities within Tower B of Menara UOA Bangsar? D
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- (d) question 4 (AUM Capital):
Whether the defendant (management corporation) is negligent in failing to seek full reimbursement from the private parcel owners of Tower B, having incurred the costs and expenses of maintaining the centralised air conditioning facilities, including the electricity and maintenance costs thereof solely for the benefit of a particular private parcel owner, namely UOA REIT, in respect of the centralised air conditioning facilities within Tower B of Menara UOA Bangsar? and F
- (e) question 5 (AUM Capital):
In the event the answer to question 1 and/or 2 above is the affirmative, the defendant (management corporation) shall take all necessary steps to determine the sum for a full reimbursement of the costs and expenses of maintaining the centralised air conditioning facilities, include the electricity and maintenance costs thereof against DATS Management Sdn Bhd and/or Desa Bukit Pantai Sdn Bhd and/or Peninsular Home Sdn Bhd and/or UOA Asset Management Sdn Bhd and/or RHB Trustee, taking into account the duration and amount of the expenses involved, and setting off the contribution made by UOA REIT, if any. G
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[4] The High Court decided the case in favour of the management corporation (respondent), answering the questions 1 and 2 in the affirmative and questions 3 to 5 in the negative.

A FACTUAL BACKGROUND

[5] The management corporation of Menara UOA Bangsar, is a body corporate established on 5 June 2013 pursuant to s 171 of the Strata Titles Act 1985.

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[6] AUM Capital is the registered proprietor of one of the 440 parcels in Menara UOA Bangsar.

C [7] Menara UOA Bangsar is a mixed-development property which contains 440 stratified parcels. The development has two office towers, one retail block and one carpark comprising:

(a) 426 individual parcels in office Tower A ('Tower A');

D (b) three individual parcels in office Tower B ('Tower B');

(c) nine retail parcels in the podium ('retail'); and

(d) two parcels consisting of one parcel of multi-storey elevated carpark and one parcels of basement car parks (collectively referred to as the 'carparks').

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[8] All but three of the parcels in Tower B, retail and the carpark are beneficially owned by the UOA Real Estate Investment Trust ('UOA REIT') under the management of UOA Asset Management Sdn Bhd. These parcels are registered in the name of RHB Trustee Berhad as the trustee for UOA REIT.

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[9] Of the remaining three parcels not owned by UOA REIT:

(a) one of the three parcels in Tower B (Lot No 14) and one of the nine parcels in retail (Lot No 9) are owned by one Angkasa Restu Sdn Bhd ('Angkasa Restu'); and

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(b) one of the other nine parcels in retail (Lot No 3) is owned by Desa Bukit Pantai Sdn Bhd, which is leased to the management corporation for use as the management office for Menara UOA Bangsar at a nominal rental until 26 November 2016.

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The centralised air conditioning facilities ('CACF')

I [10] The CACF of Menara UOA Bangsar provides chilled air to:

(a) Tower A, which contains:

(i) one cooling tower located at the rooftop area of Tower B;

(ii) a chiller plant room, consisting of two Trane chillers, located at level

8 of the podium at the carparks; and

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- (iii) 62 chilled water fan coil units, two units on each of the 31 floors between level 9 to level 39, for the lift lobbies area.

[11] The chilled air generated from the above machinery is channelled through ventilation ducts, serving the lift lobbies and common corridors located in the common property of levels 9 to 39 of Tower A.

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[12] Each of the 426 office private parcels in Tower A has split individual unit air-conditioning facilities in each respective parcel and is paid for by the individual parcel owners because it does not form part of the common property of Tower A.

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Tower B, the retail area and the carparks

These comprise of the following:

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- (a) three cooling towers located at the rooftop area of Tower B;
- (b) a chiller plant room, consisting of four Trane chillers, at level 8 of the podium at the carpark;
- (c) ten chilled water fan coil units on four floors of the basement carpark to cater to the lift lobbies; and
- (d) 13 chilled water fan coil units on six floors of the elevated carpark to cater to the lift lobbies;
- (e) 56 chilled water fan coil units on three floors of the retail area at the podium, that is, 51 units to cater to the retail area, and five for the lift lobbies;
- (f) 270 chilled water fan coil units at Tower B, that is, 17 units on each of the 15 floors between level 9 to level 23, to cater to the office areas and one unit on each of the 15 floors to cater to the lift lobbies.

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[13] The chilled air generated from the above machinery is channelled through ventilation ducts, serving the common property (lift lobbies and corridors) and private parcels at Tower B, private parcels at the retail area, and the common property at the carparks.

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[14] The management corporation pays for the electricity and maintenance of the CACF, which supplies chilled air to the:

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- (a) common property of Towers A and B;
- (b) the common property in the carparks; and
- (c) the private parcels of Tower B and in the retail area.

A PARTIES CONTENTIONS

The appellant (AUM Capital)

B [15] AUM Capital's position is that the management corporation should not be maintaining the CACF at its own expense because, although the CACF is located on common property and capable of being enjoyed by all parcel proprietors in Menara UOA Bangsar, these facilities are enjoyed to a greater extent by a few parcel proprietors than by the rest of the Menara UOA Bangsar parcel proprietors.

C [16] AUM Capital claims that the management corporation has unlawfully utilised the money in the maintenance account to pay for the maintenance of the CACF and sought to compel the management corporation to seek full re-imbursement of all monies/sums paid by the management corporation towards the maintenance of the CACF.

The respondent (management corporation)

E [17] The management corporation takes the position that the CACF should be maintained by it as it forms part of the common property of Menara UOA Bangsar.

ANALYSIS AND DECISION

F [18] The starting point in our analysis must surely lie first in the consideration of what are the duties and powers imposed upon the management corporation and thereafter, what amounts to common property within the scheme of the relevant legislation.

G *Duties and powers of management corporation*

[19] The Strata Titles Act 1985 and s 43 thereof states as follows:

H 43(1) The duties of the management corporation include the following:

- (a) to manage and properly maintain the common property and keep it in a state of good and serviceable repair;

I [20] Section 59 of the Strata Management Act 2013 reads:

59 Duties and powers of management corporation

(1) The duties of a management corporation shall be as follows:

- (a) to properly maintain and manage the subdivided building or land and the common property and keep it in a state of good and serviceable repair;

[21] It is abundantly clear from the above that the duty and management of 'common property' falls upon the management corporation. A

[22] In order for the management corporation to carry out such duties, funding is required and for that purpose a maintenance account is established. B

[23] The Strata Titles Act 1985 and s 44 thereof states as follows:

44 Management fund

(1) The management corporation shall establish a management fund sufficient in the opinion of the management corporation to meet the administrative expenses as may be incurred for the purposes of controlling, managing and administering the common property, paying rent, rates and premiums of insurance and discharging any other obligation of the management corporation. C

[24] Section 50 of the Strata Management Act 2013 states: D

50 Developer to establish maintenance account in the name of management corporation

(3) The maintenance account shall be used solely for the purpose of meeting the actual or expected general or regular expenditure necessary in respect of the following matters: E

(a) maintaining the common property in good condition on a day-to-day basis;

(b) paying for the expenses in providing cleaning services for the common property, security services and amenities for the occupiers of the building. F

[25] The next question of relevance is what constitutes 'common property' within the relevant scheme of legislation?

[26] Section 4 of the Strata Titles Act 1985 defines 'common property' as follows: G

'common property' means so much of the lot as is not comprised in any parcel (including any accessory parcel), or any provisional block as shown in an approved strata plan; H

[27] Section 2 of the Building and Common Property (Maintenance and Management Act) 2007 defines common property as follows:

'common property', in relation to a development area, means so much of the development area as is not comprised in any parcel, such as the structural elements of the building, stairs, stairways, fire escapes, entrances and exits, corridors, lobbies, fixtures, and fittings, lifts, refuse chutes, refuse bins, compound drains, water tanks, sewers, pipes, wires, cables and ducts that serve more than one parcel, the exterior of all common parts of the building, playing fields and recreational area, driveways, car I

A parks, and parking areas, open spaces, landscape areas, walls and fences, and all other facilities and installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building;

B [28] Section 2 of the Strata Management Act 2013 ('the SMA 2013') defines common property as follows:

'common property' —

- (a) in relation to a building or land intended for subdivision into parcels, means so much of the development area —
- C** (i) as is not comprised in any parcel or proposed parcel; and
- (ii) used or capable of being used or enjoyed by occupiers of two or more parcels or proposed parcels; or
- (b) in relation to a subdivided building or land, means so much of the lot —
- D** (i) as is not comprised in any parcel, including any accessory parcel, or any provisional block as shown in a certified strata plan; and
- (ii) used or capable of being used or enjoyed by occupiers of two or more parcels;

E [29] As can be noticed from the flavor of the above definitions referred to, what amounts to 'common property' is almost exclusively defined by reference to location.

F [30] This was recognised and alluded to by the learned High Court judge ('HCJ') in her grounds of judgement.

G [31] So, in relation to question No 1 posed, the next relevant question is where is the CACF in Tower B located?

[32] It can be clearly seen from the plans of the building and photographs of the CACF, that it is located outside of any private parcels.

H [33] The CACF thus has to be logically defined as 'common property' within the scheme of the relevant legislation.

[34] The result of this is that the answer to both question No 1 and question No 2 has to be in the affirmative.

I [35] The management corporation of Menara UOA Bangsar is thus statutorily duty bound by s 59(1)(a) of the Strata Management Act 2013 to properly maintain and manage the common property and keep the same in a state of good and serviceable repair. It would also require them to bear the costs

and expenses of operating and the CACF which includes the electricity and maintenance costs involved.

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[36] It follows that the management corporation is therefore entitled to use monies from the maintenance account to maintain the CACF as common property under the SMA 2013.

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[37] It also follows that there is no legal obligation on the part of the management corporation to pursue or claim for any reimbursement for the maintenance costs paid utilising the maintenance account funds.

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[38] The express wording of s 59(3)(b) of the 2013 Act empowers a management corporation to recover 'any money expended' in performing any 'repairs, work or act' if 'the repairs, work or act were or was wholly or substantially for the benefit of some of the parcels only ...'.

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[39] The act of Menara UOA Bangsar in making payment of the electricity charges for the CACF benefits the common property and some of the parcels and not some of the parcels only as the CACF benefits the:

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- (a) common property of Towers A and B;
- (b) common property in the carpark; and
- (c) private parcels of Tower B and the retail area.

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[40] As the CACF does not benefit some of the parcels only, the management corporation cannot rely on s 59(3)(b) of the 2013 Act to seek reimbursement from the proprietors of individual parcels at Tower B for the CACF electricity charges paid by the management corporation.

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[41] The interpretation that AUM Capital seeks to place on s 59(3)(b) of the 2013 Act by totally ignoring or disregarding the phrase 'only' is misplaced in the light of the trite and settled principles of statutory interpretation that express words in a statute cannot be simply disregarded because Parliament does not legislate in vain.

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[42] As submitted by learned counsel for the management corporation, the fundamental tenet of strata law is that common property of a development area is generally taken as a whole regardless of each proprietor's level of use or enjoyment of the common property.

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[43] The natural consequence of this is that the management corporation is statutorily obliged to maintain facilities that substantially benefits some but not all parcels, so long as the facilities benefit the common property as well.

- A [44] Any other interpretation would result in the management corporation having to keep tabs on the different respective usages of the common property by all the parcels in a strata development, and then to seek reimbursement from each of those private parcel owners based on the different extent of their individual ‘benefits’.
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- C [45] We agree with the submission of counsel for the management corporation that the practice of charging different rates of service charges to take into account the specific amount of usage of different elements of common property for example, lifts and swimming pools does not accord with the legislative intent of the 2013 Act which requires the management corporation to impose a single rate of service charges on all parcels according to their share units, unless those parcels are used for ‘substantially different purposes’ according to s 60 of the 2013 Act.
- D [46] We are fortified in our reasoning and indeed bound by the decision of the Court of Appeal in the case of *Perbadanan Pengurusan 3 Two Square v 3 Two Square Sdn Bhd & Anor and another appeal* [2019] MLJU 1983; [2019] 1 LNS 2281 (‘3 Two Square’).
- E [47] We say this because of the salutary decision in the case of *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 followed by our Federal Court in *Dalip Bhagwan Singh v Public Prosecutor* [1998] 1 MLJ 1, where the rule of judicial precedent was explained as follows:
- F The doctrine of stare decisis or the rule of judicial precedent dictates that a court other than the highest court is obliged generally to follow the decisions of the courts at a higher or the same level in the court structure subject to certain exceptions affecting especially the Court of Appeal.
- G The said exceptions are as decided in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718. The part of the decision in *Young v Bristol Aeroplane* in regard to the said exceptions to the rule of judicial precedent ought to be accepted by us as part of the common law applicable by virtue of Civil Law Act 1956 vide its s 3.
- H To recap, the relevant ratio decidendi in *Young v Bristol Aeroplane* is that there are three exceptions to the general rule that the Court of Appeal is bound by its own decisions or by decision of courts of co-ordinate jurisdiction such as the Court of Exchequer Chamber. The three exceptions are first, a decision of Court of Appeal given per incuriam need not be followed; secondly, when faced with a conflict of past decisions of Court of Appeal, or a court of co-ordinate jurisdiction, it may choose which to follow irrespective of whether either of the conflicting decisions is an earlier case or a later one; thirdly it ought not to follow its own previous decision when it is expressly or by necessary implication, overruled by the House of Lords, or it cannot stand with a decision of the House of Lords. There are of course further possible exceptions in addition to the three exceptions in *Young v Bristol Aeroplane* when there may be cases the circumstances of which cry out for such new exceptions
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so long as they are not inconsistent with the three exceptions in *Young v Bristol Aeroplane*.

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[48] In the *3 Two Square* case, the main issue also centered around the question of the duties of the management corporation in maintaining and operating the cooling tower of the centralised air-conditioning system on common property.

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[49] It was held by the Court of Appeal as follows:

[30] On the first point, we find that *the definition of 'common property' in s 4 of the STA defines it by exclusion, that is, common property is simply that which is not comprised in any parcel* (including any accessory parcel), or any provisional block as shown in an approved strata plan. Hence, under s 4 of the STA, by exclusion, all those areas not comprised in or demarcated as parcels would be common property. Thus, *we agree that the central cooling tower, lifts and public toilets in Crest Tower, which do not form part of the strata parcels or any accessory parcel are common property*. The fact that these areas are not demarcated as common property in the strata plan does not mean that they are not common property. After all any demarcation on the strata plan would have been done by the plaintiff as the developer of 3 Two Square.

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[31] *And on the exclusive use argument, we agree with the findings of the learned High Court judge that even though the utility of these facilities accrue substantially (even if not exclusively) to the occupiers of Crest Tower, the cost of maintenance of such facilities cannot be left to the plaintiff as strata parcel owners in that tower block. As these areas are common property, it would be the obligation of the management corporation to maintain such property as set out in s 43(1)(a) of the STA, which provides as follows:* (1) *The duties of the management corporation include the following:*

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(a) to manage and properly maintain the common property and keep it in a state of good and serviceable repair;

[32] *The issue of whether an area in a strata development is common property cannot be construed by reference to its mere utility of these areas/facilities to certain parcel owners. Nowhere is the concept of exclusive or special use provided for in the STA. Maintenance charges imposed on the parcel owners by the management corporation is for the maintenance and management of all the common areas in the strata development. Crest Tower is part and parcel of the 3 Two Square, and It so happens that the plaintiff owns all the strata units in Crest Tower, but that does not mean that the plaintiff as proprietor of all strata parcel units in Crest Tower has to manage and maintain the cooling tower, lifts and public toilets in Crest Tower or for that matter any other common property in that tower block.*

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[33] *The fact that the plaintiff is the only proprietor of the strata parcels in Crest Tower is simply a matter of circumstance. The plaintiff is at liberty to dispose anyone or more of its parcels to any third party. And if it does, the facilities in issue, such as the centralised air-conditioning, as well as the lifts and toilets located at Crest Tower would be capable of being used by these future owners in common with the Plaintiff, its employees, agents and tenants. In this regard, we entirely agree with the learned High Court judge when he held that: '... the proper categorisation of a facility as common property cannot*

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- A *depend on the identity of the proprietor in question, as an absurd result will arise if the facility is not considered common property on one day (and thus need not be maintained by the management corporation) but would be considered common property once the proprietor sells one of his parcels to a third party. It is well established that the court may favour an interpretation of statute that does not lead to an absurd result: see the dicta of*
- B *Denning MR in Northman v Barnett London Borough Council, as applied by the Federal Court recently in Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Berhad v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2017] 1 LNS 296. Hence, we are fully in accord with the learned trial judge's finding that the onus and responsibility for the maintenance and upkeep of these facilities in Crest Tower rests with the*
- C *management corporation. (Emphasis added)*

[50] In the High Court, the relevant reasoning is set out as follows:

- Common Property
- D The Background Relating To The Parties' Contentions
- [26] A key issue affecting the determination of a substantial portion of the plaintiff's claim is the *proper categorisation of certain facilities located in Crest Tower. These facilities include the central cooling tower, toilets and lifts. The parties dispute whether such facilities should be maintained by the management corporation, or whether the plaintiff, as the owner of the parcels located in Crest Tower, should bear the costs and expenses of operating and maintaining such facilities.*
- E
- [27] The plaintiff's position was that these facilities are 'common property' within the meaning of the Strata Titles Act 1985 and the Building and Common Property (Maintenance and Management) Act 2007. Because the responsibility to manage and maintain common property lies with the management corporation, the plaintiff contended that it was entitled to not only the costs that it had expended in maintaining the relevant facilities, but also to compel the management corporation to maintain such facilities.
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- [28] *The utility of these facilities accrues substantially (even if not exclusively) to the occupiers of Crest Tower. For example, unlike Crest Tower, none of the other blocks in 3TwoSquare has central air-conditioning. The parcels in these other blocks are cooled by split air-conditioning units installed by the respective parcel owners within their own parcels. Thus, the costs of operation and maintenance of these split units fall to the respective parcel owners. By contrast, Crest Tower is installed with central air conditioning, the costs of operating and maintenance of which are not insubstantial. The argument was advanced on behalf of the first to eighth defendants that it would not be fair to the parcel owners of the other blocks in 3 Two Square to contribute to the costs of operation and maintenance of the centralised air-conditioning system in Crest Tower, since they do not benefit from or enjoy the central air-conditioning.*
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- ...
- I [36] *In my judgment, this contention fails because the definition of 'common property' in the Strata Titles Act 1985 defines it by exclusion: common property is simply that which is not a parcel. Accordingly, there is no need for there to have been labels affixed to the relevant areas to be designated as common property; all the areas that are not identified as parcels will automatically be regarded as common property.*

- ... A
- [44] *Accordingly, the responsibility for the maintenance and upkeep of these facilities should fall on the management corporation.* (Emphasis added.)
- [51] It is clear from the decision and reasoning of the High Court and the Court of Appeal's decision in *3 Two Square* that: B
- (a) common property is all that part of the development which is not contained in any parcel, irrespective of who enjoys the benefits thereof;
 - (b) the management corporation is under a duty in law to maintain and manage common property; C
 - (c) that duty in law extends to bearing the operating costs of equipment located on common property; and
 - (d) that duty in law to bear operating costs includes bearing the electricity charges of centralised air-conditioning facilities located on common property, which only serve one of six blocks of that development. D
- [52] The High Court judge in the instant case who no doubt considered herself bound by the decision of the Court of Appeal in *3 Two Square*, correctly applied those principles in the case and answered questions 1 and 2 in the affirmative, when finding that in the case of Menara UOA Bangsar, the: E
- (a) the CACF is located on outside any parcel, and is thus common property; F
 - (b) The 'exclusivity' or extent of usage or benefit by owners of the Tower B, retail and carpark parcels is irrelevant to the question of whether the CACF is common property; and
 - (c) the management corporation has a duty to maintain and manage the CACF as a result. G
- [53] In light of our reasoning above, questions Nos 3, 4 and 5 is accordingly answered in the negative. H
- [54] Based upon the reasons given aforesaid, we find that the learned High Court judge had committed no error that warranted appellate intervention.
- [55] In the premises the appeal of AUM Capital ('appellant') is dismissed with costs of RM10,000 to the respondent subject to allocatur. I

A *Appeal dismissed.*

Reported by Nabilah Syahida Abdullah Salleh

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